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Supreme Court, U.S.
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No. 95-990

In the Supreme Court of the United States

OCTOBER TERM, 1995

ROLAND A. JONES, PETITIONER

v.

TOGO WEST, SECRETARY OF THE ARMY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed the district court's denial of petitioner's untimely motion for relief from judgment and motion for a new trial, both filed after the court of appeals had affirmed the district court's judgment against him.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 13a-14a) is not reported. The order of the district court (App., *infra*, 1a-2a) is not reported. The earlier opinion of the court of appeals (Pet. App. 10a-12a) affirming the district court's judgment against petitioner on the merits of his case is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 31, 1995. A petition for rehearing was denied on September 29, 1995. Pet. App. 29a. The petition for a writ of certiorari was filed on December 20, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Petitioner, a black male who served in the United States Army from 1959 to 1980, filed suit in 1988 against the Army, various boards, and individual officials, claiming that he had been subjected to discrimination by respondents based on his race and color, in violation of various federal laws, including Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, and 28 U.S.C. 1981 and 1985. See Pet. App. 20a-21a, 11a. Petitioner had been forced to retire after obtaining the rank of lieutenant colonel because he was not qualified for further promotion. *Id.* at 20a. Petitioner alleged that his forced retirement resulted from "a systematic policy of denying black officers the assignments necessary to qualify for promotion." *Ibid.*

In two separate orders issued in 1988 and 1989, the district court dismissed several of petitioner's claims, including his allegations of a Title VII violation, as well as his claims of institutional discrimination. See Pet. App. 20a n.1. The court declined to dismiss the Section 1981 and 1985 claims against the Army Board for the Correction of Military Records ("ABCMR") and against two individual respondents. Pet. App. 20a-21a. Following additional proceedings, the district court granted summary judgment to respondents on the Section 1981 and 1985 claims, but deferred, pending further information from the parties, ruling on the summary judgment motion regarding whether the ABCMR had failed to follow its own regulations. Pet. App. 21a. Finally, in September, 1991, the court granted summary judgment to respondents on the remaining claims. *Id.* at 20a-24a.

b. The court of appeals affirmed in a per curiam order dated October 29, 1992. Pet. App. 10a-12a. The court ruled that the district court properly rejected all of petitioners' claims.

2. a. On January 7, 1993, after the court of appeals had affirmed the district court judgment against him, petitioner moved the district court for a new trial on his claims under Sections 1981 and 1985, pursuant to Fed. R. Civ. P. 59, and for relief from the district court's final judgment of September 30, 1991, pursuant to Fed. R. Civ. P. 60(b)(1)-(3). Pet. App. 14a. The district court denied the motions by order dated February 10, 1994. App., *infra*, 1a-2a.

b. The court of appeals affirmed. Pet. App. 13a-14a. The court noted its earlier ruling affirming the district court judgment on the merits and then ruled that petitioner's Rule 59 and Rule 60(b)(1)-(3) motions were untimely and had been correctly denied. The court refused to consider the "plethora of issues that have nothing to do with whether the district court should have rejected [petitioner's] post appeal motions as untimely." Pet. App. 14a. The court denied a petition for rehearing. *Id.* at 29a.

ARGUMENT

Petitioner seeks to raise (Pet. i, 17-23) a number of issues that were raised and rejected, or should have been raised, before the district court and the court of appeals at the time of their review of the motions to dismiss and for summary judgment. The courts below correctly held that petitioner's post-appeal motions were untimely filed. None of the questions presented by petitioner challenges these rulings. See Pet. i.

Any motion for a new trial or motion to alter or amend judgment under Federal Rule of Civil Pro-

cedure 59 must be served not later than 10 days after the entry of judgment. Fed. R. Civ. P. 59(b) and (e). The district court's final judgment in petitioner's case was entered on September 30, 1991. Pet. App. 14a. Petitioner filed his Rule 59 motion on January 7, 1993, 15 months later. Pet. App. 14a. The motion was therefore untimely. A motion for relief from judgment or order under Federal Rule of Civil Procedure 60(b) "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Plaintiff's motion for relief pursuant to Fed. R. Civ. P. 60(b)(1)-(3) was filed on January 7, 1993 (Pet. App. 14a), 15 months after judgment and was therefore untimely.[1]

The merits of petitioner's case were fully litigated before the district court and the court of appeals. Petitioner presents no question warranting review by this Court.

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[1] A motion for relief from judgment under Fed. R. Civ. P. 60(b)(4)-(6) must be made "within a reasonable time" of the entry of judgment. Petitioner does not contend that that provision is applicable to his case. In any event, there is nothing in the record to support a finding that the courts would have erred in concluding that 15 months was beyond a reasonable time in the circumstances of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1996

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 1:88-cv-727-MHS

ROLAND A. JONES, PLAINTIFF

v.

SECRETARY OF THE ARMY, ET AL., DEFENDANTS

[FILED FEB. 10, 1994]

ORDER

This action is before the Court on numerous motions filed by plaintiff. For the reasons stated below, the Court denies the motions.

In September 1991, the Court granted defendants summary judgment on plaintiff's remaining claims. In October 1991, plaintiff appealed the Court's order. In October 1992, the Eleventh Circuit Court of Appeals affirmed this Court's grant of summary judgment to defendants and ordered plaintiff to pay to defendants the costs of the appeal. Plaintiff has moved for sanctions against counsel for defendants, for relief from judgment, for a recall of summary judgment, and for a new trial.

The Court concludes that, under Federal Rule of Civil Procedure 11, no grounds exist for awarding plaintiff sanctions against defense counsel. The Court also finds no grounds for granting plaintiff relief from summary judgment or a new trial.

In summary, the Court DENIES plaintiff's motion for sanctions against counsel for defendants [#111-1]; for relief of judgment [#112-1]; for recall of judgment [#112-2]; for a new trial [#112-3]; for relief of judgment [#113-1] for recall of summary judgment [#113-2]; for a new trial [#113-3]; and DISMISSES this action.

IT IS SO ORDERED, this *10th* day of February, 1994.

/s/ *MARVIN H. SHOOB*
Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia